

## TOWN OF NEW WINDSOR

# ZONING BOARD OF APPEALS Regular Session Date: MARCH 24, 2003

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TOWN CLERK'S OFFICE				

#### **AGENDA:**

7:30 p.m. - Roll Call

Motion to accept minutes of **FEBRUARY 24, 2003 & MARCH 10, 2003** meeting as written.

## PRELIMINARY MEETINGS:

- 1. **KERRY KIRK (for JOSEPH DELEONARO) (#03-13)** Request for a Use Variance for a 3-family dwelling at 19 Hillside Avenue in an R-4 Zone (12-1-30)
- 2. EUGENE HECHT (#03-14) Request for Area Variance of:

Section 48-18H-1(a) for 96 square feet (total all faces) for freestanding sign and; Section 48-18H-1(b) for 3' 6" X 10' for wall sign

at 161 Windsor Highway (formerly Pleasant Acres) in a C Zone (9-1-25.4)

#### **PUBLIC HEARINGS:**

- 3. FRANCIS WHITAKER (for ROSE CRUDELE) (#03-07) Request for a residential building lot adjoining land in the same ownership, which is nonconforming as to bulk regulations; Section 48-26 on Myrtle Avenue in an R-4 zone (15-2-10)
- 4. MARTIN & SUSAN OLSEN (#03-08) Request for 16 foot Required Minimum Side Yard Setback for existing deck on single-family home at 336 Sycamore Drive in an R-4 Zone (63-4-16)
- 5. ROBERT ANDREWS (#02-67) Request for 5 foot Required Side Yard and 10 foot Maximum Building Height to construct detached garage;48-14-A-1(B); at 170 Toleman Road in an R-1 Zone (56-1-25.6)
- 6. ANTHONY FAYO d.b.a. CLASSIC HOME BUILDERS (#03-02) Request for 25 foot Minimum Lot Width to construct a single-family home on Bull Road in an R-1 Zone (56-1-9)

Myra (845) 563-4615

4

#### TOWN OF NEW WINDSOR

## ZONING BOARD OF APPEALS

MARCH 24, 2003

MEMBERS PRESENT: LAWRENCE TORLEY, CHAIRMAN

MICHAEL KANE MICHAEL REIS STEPHEN RIVERA

ALSO PRESENT: MICHAEL BABCOCK

BUILDING INSPECTOR

ANDREW KRIEGER, ESQ. ZONING BOARD ATTORNEY

MYRA MASON

ZONING BOARD SECRETARY

AESENT: LEN MCDONALD

#### REGULAR MEETING

MR. TORLEY: I'd like to call to order the March 24, 2003 meeting of the Zoning Board of Appeals. And ladies and gentlemen, I'd like to call for a moment of silence for our troops in harms way over in Iraq.

(Whereupon, a moment of silence was observed.)

# APPROVAL MINUTES DATED 2/24/03 & 3/10/03

MR. TORLEY: All right, motion on the minutes?

MR. KANE: I move we accept the minutes of February 24

and March 10 as written.

MR. REIS: Second it.

# ROLL CALL

MR.	RIVERA	AYE
MR.	REIS	AYE
MR.	KANE	AYE
MR.	TORLEY	AYE

#### PRELIMINARY MEETINGS:

# KERRY KIRK (FOR JOSEPH DELEONARO) #03-13

Ms. Kerry Kirk appeared before the board for this proposal.

MR. TORLEY: Request for a use variance for a three-family dwelling at 19 Hillside Avenue in an R-4 zone.

MS. KIRK: I'm with Prudential Rand Realty. My client purchased the home in 1978, it was assured by all parties that it was a three family. I do have a partial letter where the attorney did apparently try to pursue this. There were tenants in it prior to this so just trying to show that it's been a three family as far back as we can tell since 1959 and just asking that it be grandfathered. My client is 74 years old, of poor health and trying to go to warmer climates.

MR. KANE: Do you understand what you need to prove to get the use variance?

MS. KIRK: Well, I have to prove hardship, have to prove that the neighborhood won't be altered in its characteristics for which the neighborhood currently does have ten vacant land parcels, ten multi-family, taxable multi-family parcels and 12 single family homes so it's currently a third, a third and a third. And it's been that way as far as I can tell for many years. So the hardship part we did try to see if we can sue anybody involved in the purchase of the home to get some monetary compensation but we were informed by an attorney that the statute of limitations has expired.

MR. KANE: Your best bet to get a use variance is going to be extremely difficult, your best bet is to be grandfathered in as an interpretation that this was used before zoning which you indicated was probably late 1950's.

MS. KIRK: I do have some letters from tenants who lived in the property.

MR. TORLEY: For the public hearing.

MR. KANE: That will help.

MR. TORLEY: Not only do they have to show that they are renting and it's before zoning came in but continued throughout the time.

MR. KANE: As best as you can. Any that you paid as a multi-family house in taxes overall these years would help.

MS. KIRK: As far as I can tell, it was when the attorney pursued checking with the Town of New Windsor in 1978 cause the letter that I have from the attorney to the Town says he authorizes the building inspector to go out and check the property to make sure that it's in compliance with existing Town ordinances and the property card shows that at this point in time that somebody obviously did go out and that's when it went from 210 to 230.

MR. BABCOCK: 210 is single, 330 is three family.

MR. KANE: Do you have the multiple gas and electric meters in the home?

MS. KIRK: Yes.

MR. KANE: Anything that you can go back with old bills.

MS. KIRK: We called Central Hudson and they said they can't help us, their records don't go back that far.

MR. KANE: You see where we're going, the more records predating zoning which is 1966.

MR. BABCOCK: January 1st.

MR. KANE: Before that is going to help the cause cause other than that to get a use variance probably never mind the self-created hardship, the hardest hurdle that you have to come across to get a use variance is to prove that you cannot sell that house as a one-family

house, not making a profit, just making a reasonable return.

MS. KIRK: We probably could make a reasonable return but the problem being he's 74 years old on a fixed income of which this is part of it to remove two kitchens and to redo all of the sheet rock and et cetera.

MR. KANE: That you would need when you come in for the public hearing, you need to spell that out dollars and cents.

MS. KIRK: Let me ask you one quick question. The letters are from tenant which is from '54 to '62 and the other tenant said '60 to '62, so are you basically telling me I have to prove '64 to '66?

MR. REIS: '62 through '66 and there on continual use.

MR. KANE: Well, you don't have to for every year.

MS. KIRK: Because he probably has every canceled check from every tenant he ever had.

MR. TORLEY: Has to be continuous, you have a one year grace.

MR. BABCOCK: Two years.

MR. KANE: But she's come as close as she can and that's it, that's a reasonable--

MS. KIRK: Bring in estimates.

MR. KANE: You have to cover every base because it's going to be tough to follow.

MR. TORLEY: If you fail the grandfathering test then you're going to have some very, very high hurdles. You said that you thought you could get a sale as a two family is allowable in R-4, isn't it?

MR. BABCOCK: No, one family.

MR. TORLEY: The law says reasonable return, not even a profit but a reasonable return as a one-family house. You won't necessarily have to tear out and sell it as a one-family house, it can be as it is.

MR. BABCOCK: No, it's three separate units, three separate meters, three separate kitchens, three separate doors, three separate everything.

MS. KIRK: Can't access each apartment.

MR. KANE: Which helps her. Your best bet is still to go grandfathered.

MR. TORLEY: The further back you can take it around '68, '66 timeframe, the more information that it was intended as that way and has been essentially not every month but essentially maintained as a multi-family dwelling.

MS. KIRK: Yes.

MR. REIS: Kerry, it might be in your best interest to talk to an attorney.

MS. KIRK: Michele Anderson has been helping us and she said this is the best idea she thought for us to try, that's why we're pursuing it.

MR. KANE: Andy, do you have something?

MR. KRIEGER: No, just going to say that in terms of I don't think that the applicant, I think the applicant may not understand fully with these circumstances there are two possible things that the zoning board can do. They can grant an interpretation saying that this is in essence grandfathered in, that's an interpretation. If they fail that, then it has to be application for a use variance. As the Chairman indicated to you, there are considerable legal aspects with respect to a use variance, the most difficult of which Mr. Kane has highlighted, but it's not the only one. An interpretation is merely a question if it's been used before zoning and continuously with no more than a two year break. And so all the discussion that they've

been giving to you with respect to records and proving this and so forth has to do with the interpretation phase. If it isn't enough in the opinion of the members of the board, then they would have to apply for a use various test and then it has to do with the no reasonable return, not salable as a single family, all that stuff and it is, those tests our state legislature has made those hurdles rather high, so if at all possible an interpretation is a more potentially fruitful avenue of approach if it can be done.

MR. TORLEY: Gentlemen, any other questions? I would suggest that the motion may be accomplishing both.

MR. KANE: With your permission, I'm going to make a motion that we request a public hearing for a use variance and/or an interpretation on the property as grandfathered in.

MS. KIRK: That sounds fine.

MR. REIS: Second the motion.

MR. KRIEGER: The applicant has been required to fill out a short form EAF, if in the opinion of the board that doesn't supply sufficient information, the board has a right to ask for more, the long form, the draft and so forth but the short form has been sufficient in the past for the members of the board to satisfy their SEQRA requirements. Now where the commercial comes in is in the event that it's commercial before developing it an applicant may also have to get site plan approval from the planning board, that's not this board, there's no change here, just possible additional requirement.

#### ROLL CALL

MR.	RIVERA	AYE
MR.	REIS	AYE
MR.	KANE	AYE
MR.	TORLEY	AYE

#### EUGENE HECHT #03-14

Mr. Eugene Hecht appeared before the board for this proposal.

MR. TORLEY: Request for area variance of Section 48-18H-1(a) for 96 square feet (total all faces) for freestanding sign and Section 48-18H-1(b) for 3'6" × 10' for wall sign at 161 Windsor Highway (formerly Pleasant Acres) in a C zone.

MR. HECHT: Only one sign we have, is that correct?

MR. TORLEY: No, it says two signs here.

MR. BABCOCK: One freestanding, one facade.

MR. HECHT: Facade's coming off the building tomorrow, don't want it. The other one's just for a pre-existing sign, it's been there since 1976.

MR. KANE: Illuminated in any way?

MR. HECHT: No.

MR. KANE: Blocking traffic in any way?

MR. HECHT: None.

MR. KANE: This is an existing sign that's been there since?

MR. HECHT: 1976.

MR. KRIEGER: Will you be making the, replacing that sign, will you be making it any bigger?

MR. HECHT: Using the existing sign, not even replacing it.

MR. TORLEY: Just cleaning up.

MR. HECHT: Just want to clean it and paint it.

MR. TORLEY: Gentlemen, any questions?

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: Make a motion that we set up Mr. Hecht for his requested variance, one variance for the property at 161 Windsor Highway.

MR. RIVERA: Second it.

ROLL CALL

MR.	RIVERA	AYE
MR.	REIS	AYE
MR.	KANE	AYE
MR.	TORLEY	AYE

#### PUBLIC HEARINGS:

# FRANCIS WHITAKER (FOR ROSE CRUDELE) #03-07

Mr. Francis Witaker appeared before the board for this proposal.

MR. TORLEY: Request for a residential building lot adjoining land in the same ownership, which is nonconforming as to bulk regulations, Section 48-26 on Myrtle Avenue in an R-4 zone. Is there anyone in the audience who wishes to speak on this matter? Let the record show there is none. Sir?

How you doing? I got the deeds, I MR. WHITAKER: Hi. went out and researched further back and it was very funny but Mr. Crudele after he bought this property he never changed his original deed. His original deed called for the property that's outlined almost all the way down to Foley Avenue, I think it was 75 feet from Foley Avenue but he sold off different pieces of it but he never changed it. Now about a year and a half ago, Mr. Fiedelholtz called me and asked me if I can write a deed based on a tax map and I told him no, I had to see it so anyway I went down there and it was all the old lots in Ducktown and I says yes and I wrote him up a deed for I think it was lot 10 and lot 11.1 which had a Lot 11.1 what happened was this was all house on it. owned by Mr. Crudele, he died in 1997, his wife died in 2002 and then it was deeded over to the kids but they had or to his sons, his daughters and his son.

MR. KRIEGER: Mr. Crudele would be James?

MR. WHITAKER: Yes.

MR. KRIEGER: Wife would be Elvira?

MR. WHITAKER: That's right.

MR. KANE: So the property in total passed to Elvira?

MR. WHITAKER: I think it passed to all of them, in other words, he had everybody's name on it, his daughter I notice in some previous deeds his daughter,

Margaret, was included and she died before James did, before her father did, so these daughters and sons they had really no say over this property until Elvira died which was 2002 and now they just want to get rid of these properties. In fact, they already sold 11.1 but they're trying to sell this one.

MR. TORLEY: You had two properties?

MR. WHITAKER: Yes.

MR. TORLEY: 10 and 11.1?

MR. WHITAKER: Yes.

MR. TORLEY: And they've sold 11.1?

MR. WHITAKER: Yes.

MR. TORLEY: That deal has gone through?

MR. WHITAKER: Yes, it has.

MR. KANE: They don't own it anymore then he doesn't need to be here.

MR. TORLEY: Question is whether or not they're allowed to sell it that way.

MR. WHITAKER: The strange thing of this is that--

MR. KANE: On both sets, on 10 and 11.1, are those two different taxables?

MR. WHITAKER: Yes, they were and they go back quite a ways, I was starting to look out there in Goshen and I noticed the map and old map that I had picked up was dated 1967, so they have been separate lots for a long time.

MR. TORLEY: The question is however if you look in your little insert, that particular part of the law, do these lots, will they meet the substandard lot definitions?

MR. BABCOCK: Yes, these lots though were created before that.

MR. TORLEY: But lot 10 if we were going de novo would meet the criteria for acceptable substandard lot?

MR. BABCOCK: Based on the size house they want to put on there.

MR. TORLEY: It has water and sewer and all the dimensions required?

MR. BABCOCK: To my knowledge, there's water and sewer in the area so I'm sure they can get it somehow.

MR. TORLEY: Taking advantage of that section of the code that envisioned or encompassed old small lots so this really would be not, this would be an acceptable lot under that part of the code?

MR. BABCOCK: Yes.

MR. TORLEY: I'm looking at this code as saying if you had a couple lots they're very small lots, they had them in one ownership, now the zoning changed to two acres, each of the lots was a quarter.

MR. BABCOCK: Larry, this is just the reverse of the last one that we had where we had a guy that had a house on his lot and he owned the lot next door and he wanted to sell the vacant lot next door which the law says two non-conforming lots, you know, the thing, in this instance if they wanted to sell this lot first they sold the lot with the house on it so it's basically the same situation. If they both, if they owned it right now, right now what's the record, is the record owner of these two lots same person?

MR. WHITAKER: No, I think there was a fella named Manning bought that house.

MR. TORLEY: So the lots, we have the lot we're talking about lot 10 is in ownership of?

MR. WHITAKER: Of the Crudeles.

MR. TORLEY: And 11.1 and lot 7.

MR. WHITAKER: No, 7 is Rose's home, that was part--

MR. TORLEY: That's the adjoining non-conforming lot, not 10 and 11.1, it's 10 and 7?

MR. BABCOCK: Now, yes, it was 7, 10 and 11.

MR. TORLEY: Now it's just 7 and 10.

MR. KANE: That's clearer and lot 7 again is held separately paid taxes on it separately?

MR. WHITAKER: Yes, that was the original Crudele home, they lived there until they built the other house on 11.1.

MR. REIS: Michael, prior to the change in the minimum zoning square foot of a lot, this was an acceptable lot, was it not?

MR. BABCOCK: This lot would have to be 15,000 square feet, it's only 12,000.

MR. WHITAKER: It's 12,600.

MR. BABCOCK: Right, it's one of the bigger lots in the area.

MR. KRIEGER: So let me see if I understand. Originally, James owned a block which a whole group of lots containing 7, 10, 11.1.

MR. WHITAKER: Yes, if I can see your map here, all right, he owned all this, he went all the way down to 75 feet from Foley Avenue down here.

MR. TORLEY: He owned a large string of lots.

MR. WHITAKER: Yes and what happened was--

MR. KRIEGER: When he owned them, were they separate when he first acquired them, were they separate lots?

MR. WHITAKER: No, they were part of an old farm.

MR. KRIEGER: How did they become broken up into separate lots?

MR. WHITAKER: I guess he just did it when he--

MR. KRIEGER: So he didn't have a formal subdivision, this was before formal subdivisions?

MR. WHITAKER: Right.

MR. KRIEGER: He just sold off the lots. Okay, now who owns 7 now?

MR. WHITAKER: Seven was deeded to Rose, she was the one who stayed home, took care of the old folks and she lives here now.

MR. KRIEGER: That was in '97?

MR. WHITAKER: She lived in 11.1 and that was the old family home deed deeded to her.

MR. KRIEGER: So it's still owned by Rose?

MR. WHITAKER: Yes.

MR. TORLEY: So 11.1 is now in a separate ownership aside from the family?

MR. WHITAKER: Yes.

MR. KRIEGER: Who owns 10?

MR. WHITAKER: That's the vacant lot we're talking about.

MR. KRIEGER: Who owns it?

MR. WHITAKER: Crudele.

MR. TORLEY: The entire family?

MR. WHITAKER: Three girls and a boy.

MR. TORLEY: Seven is owned individually by one of those, so lot 10 is not really owned in common ownership, she's a part owner of the other set.

MR. KANE: Exactly.

MR. TORLEY: How many letters were sent?

MS. MASON: On March 5, 50 addressed envelopes containing public hearing notice were mailed out.

MR. TORLEY: Is there anyone in the audience who wishes to speak on this? Let the record show there is none. Gentlemen, any other questions?

MR. REIS: Accept a motion?

MR. KRIEGER: Wait, there are basically two questions here, one involving the common ownership or not and one involving the substandard bulk regulations.

MR. BABCOCK: Well, right, this is one thing that the board has to discuss because what we're saying is that if it falls in the category of 48-26 of common ownership, then the bulk regulations are now 15,000 square foot for lot 10. If it's not in the same ownership and it's a separate lot, the bulk regulations are 5,000 square foot so he could and he qualifies.

MR. TORLEY: So the question that you're asking us to determine is whether this lot 10 falls under 48-26B?

MR. BABCOCK: That's correct.

MR. TORLEY: As being whether this is separate ownership or not?

MR. BABCOCK: That's correct.

MR. TORLEY: Legal question for our attorney. Three people own lot A, one of those three people own, individually owns lot B, are lot A and B in common ownership cause two people don't own the third lot?

MR. KRIEGER: It's not, and the answer to your question is I don't believe so looking at the statute for this reason. The person who owns in this case lot 7 could not unilaterally sell or control lot 10. That person couldn't do anything with lot 10 without the concurrence of all of the other co-owners. I think the statute is intended to address a situation where one person or the same persons if it's a duplicate or entity actually controls two lots that are side by side. If there's any difference and if there's an absence of control, I don't think the statute would apply.

MR. TORLEY: I know why you set this one up, Mike.

MR. BABCOCK: It's confusing.

MR. TORLEY: In that case, gentlemen, accept a motion regarding an interpretation I think is what we're looking for here.

MR. REIS: Interpretation of ownership.

MR. KRIEGER: Whether or not the two lots are--

MR. TORLEY: Whether or not this lot is considered to be a non-conforming as a bulk regulations lot held in common ownership with an adjacent lot as per 48-26B. All motions must be in the positive.

MR. KANE: So remember that when you vote.

MR. TORLEY: Do I hear a motion?

MR. REIS: I make a motion that we grant the Crudele property lot in separate ownership from lot 7, all right, as an independent lot with separate ownership and that we grant them the right, that the interpretation is that it's not in the same ownership but independent ownership.

MR. TORLEY: Might I rephrase that, that we find that lot 10 and lot 7 are not two non-conforming subdivision lots held in common ownership and therefore, Section

48-26B does not apply and this lot 10 would then fall under Section 48-26E and be a permissible building lot.

MR. BABCOCK: That's correct.

MR. KANE: Second the motion.

ROLL CALL

RIVERA	AYE
REIS	AYE
KANE	AYE
TORLEY	AYE
	RIVERA REIS KANE TORLEY

#### MARTIN & SUSAN OLSEN #03-08

Mr. Martin Olsen appeared before the board for this proposal.

MR. TORLEY: Request for 16 foot required minimum side yard setback for existing deck on single-family home at 336 Sycamore Drive in an R-4 zone. Is there anyone in the audience who wishes to speak to this matter?

MR. OLSEN: I'm just trying to get a variance so I can sell this house. I don't know what else I have to say.

MR. KANE: The existing deck, how many years has it been up?

MR. OLSEN: Eighteen years.

MR. KANE: Any complaints formally on informally about the deck?

MR. OLSEN: No.

MR. KANE: Any creation of water hazards or runoffs?

MR. OLSEN: No.

MR. KANE: Any cutting down of trees, major trees?

MR. OLSEN: I have not idea, it was before I bought the house but I don't think so.

MR. TORLEY: It would be an economic hardship to so move the deck to comply with the zoning codes?

MR. OLSEN: Yeah.

MR. KANE: How many feet off the ground is the level of the deck?

MR. OLSEN: I'd say about as high as this (indicating).

MR. KANE: Is there a door coming out from the house to the deck?

MR. OLSEN: Yes.

MR. KANE: Without the deck, would you consider it a safety hazard?

MR. OLSEN: Yeah.

MR. TORLEY: Mike, this house absent the deck would still require a rear yard variance, wouldn't it? I can't read the distance.

MR. OLSEN: Mathematically.

MR. BABCOCK: Yes.

MR. OLSEN: Deck is eight feet wide.

MR. BABCOCK: Rear yard.

MR. OLSEN: Side.

MR. BABCOCK: Side yard.

MR. TORLEY: So you need a variance for the house in any case looks like it's not 20 feet from the side yard all the way back anyhow, get it all cleaned up for the same money.

MR. BABCOCK: Yeah, I'm sure that's non-conforming, Mr. Chairman.

MR. TORLEY: So by granting a variance for the deck would also clean up any problems with the main structure of the house itself.

MR. KANE: It should.

MR. BABCOCK: Yes.

MR. RIVERA: How many notices were sent out?

MS. MASON: On March 5, 30 addressed envelopes containing the public hearing notice were mailed.

MR. TORLEY: Once again, is there anyone in the public

who wishes to speak on this? Again, let the record show there is none.

MR. KRIEGER: Is the deck similar in size and appearance to other decks in the neighborhood?

MR. OLSEN: Small.

MR. KRIEGER: Similar?

MR. OLSEN: Yes.

MR. KANE: Accept a motion?

MR. TORLEY: Yes, sir.

MR. KANE: I move we approve the requested variance of Martin and Susan Olsen at 336 Sycamore Drive.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA AYE
MR. REIS AYE
MR. KANE AYE
MR. TORLEY AYE

### ROBERT ANDREWS #02-67

Mr. Robert Andrews appeared before the board for this proposal.

MR. TORLEY: Request for 5 foot required side yard and 10 foot maximum building height to construct detached garage, 48-14-A-1(B) at 179 Toleman Road in an R-1 zone.

MR. TORLEY: Is there anyone in the audience who wishes to speak on this matter? Sir?

MR. ANDREWS: I just want to build a garage, I want to leave room between the garage and the existing house.

MR. TORLEY: So it's a detached garage?

MR. ANDREWS: It's detached.

MR. KANE: Will you be creating runoffs or water hazards with the building of the garage?

MR. ANDREWS: Not really, no, not that I foresee. I'm having all the drainage put in.

MR. KANE: Garage itself, will it been similar in size to other garages in the area?

MR. ANDREWS: There's one right next door that's one level, I'm going to have two levels, I have a wood shop upstairs.

MR. KRIEGER: If permitted, will it be any higher than the existing house?

MR. ANDREWS: No, no.

MR. KRIEGER: Will it be higher than other houses in the neighborhood?

MR. ANDREWS: No.

MR. KANE: Do you think the appearance of it would drastically affect the appearance of the neighborhood?

MR. ANDREWS: No.

MR. TORLEY: Mike, we only have a requirement for 10 foot side yard in R-1?

MR. BABCOCK: Yes, it's a detached garage, Mr. Chairman.

MR. TORLEY: So it's an accessory building?

MR. BABCOCK: That's correct.

MR. RIVERA: Are you going to build up, is this the garage?

MR. ANDREWS: No, that's my neighbor's garage, my garage is going to be right next to it, our driveways go up side by side and connect straight into here.

MR. KANE: How far off the street is the garage going to be?

MR. ANDREWS: I'd say 200 feet.

MR. TORLEY: So you basically have a shared driveway?

MR. ANDREWS: Yes.

MR. TORLEY: Are you replacing with a separate driveway?

MR. ANDREWS: No, just going straight in.

MR. TORLEY: Where is your neighbor's?

MR. ANDREWS: Well, they connect right here and his goes down right along here.

MR. TORLEY: It's a shared driveway?

MR. ANDREWS: No, no, they're just right next to each other and they're connected for easy access.

MR. TORLEY: In building this garage you're not going

to--Mike, I started a sentence for you, in building this garage, he's not going to change any water flows?

MR. KANE: We covered that.

MR. ANDREWS: I have a drainage ditch that we put from the middle of the house all the way down around there already and there's existing drainage there also.

MR. TORLEY: So there will be a drainage ditch along the property line?

MR. ANDREWS: And there already is one there but we're going to redo it all.

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: Make a motion that we grant Mr. Andrews--

MR. BABCOCK: Did you open it up to the public?

MR. TORLEY: Found no one in the audience wishing to speak and we opened and closed it.

MR. REIS: Make a motion that we grant Mr. Andrews his requested variance for 179 Toleman Road.

MR. KANE: Second it.

ROLL CALL

MR. RIVERA AYE
MR. REIS AYE
MR. KANE AYE
MR. TORLEY AYE

# ANTHONY FAYO D/B/A CLASSIC HOME BUILDINGS #03-02

Mr. Anthony Fayo appeared before the board for this proposal.

MR. TORLEY: Request for 25 foot minimum lot width to construct a single-family home on Bull Road in an R-1 zone. I assume there's members of the audience wishing to speak on this? What we're doing is sending around a piece of paper for your name and address just so we can have it accurate for the record.

MS. MASON: On March 5, 16 addressed envelopes were mailed out containing the notice of public hearing.

MR. REIS: Mr. Chairman, our company is involved in the sale of this property so I feel it's only right that I recuse ourselves from the process.

MR. TORLEY: I thank you. Once again, I appreciate it, you have been very, very good about that. So what do you want to do?

MR. FAYO: I need 100 foot variance, I should say I need the variance changed from 100 to 175 foot so I can build the single family dwelling.

MR. BABCOCK: Mr. Chairman, that's a pre-existing lot, it measures 100 foot at the lot width, the requirements in this zone now have been changed to 125 so he needs a variance of 25 foot lot width.

MR. KANE: When did the changes take place Mike?

MR. BABCOCK: This 125 foot lot width change was the one prior to the last one, you would have three years from that date, don't know what the date was, might have been '86.

MR. TORLEY: It's been a while.

MR. BABCOCK: It's more than three years I know that.

MR. TORLEY: The lot we're referring to is number 9 on the tax map?

MR. REIS: That's correct.

MR. BABCOCK: That's correct.

MR. TORLEY: Who owns 8 and 10?

MR. FAYO: The Browns own 8 which would be to the right side and I don't know who owns the bigger parcel.

MR. TORLEY: Just establishing that you're not the owner of the adjacent lots.

MR. FAYO: No.

MR. KRIEGER: And the one next to it is substantially the same size as 9, is that correct, appears to be from the tax map?

MR. FAYO: Yes, it does appear to be.

MR. TORLEY: There's a string along there that have essentially the same road frontage.

MR. FAYO: Pretty much.

MR. KANE: I have no questions at the moment.

MR. REIS: May I make a couple comments here?

MR. TORLEY: Feel free.

MR. REIS: We have been in the process of selling this property for a few years and because of the size of the property, we haven't had success, okay, just to make a note of that. This gentleman wants to build a house on it, obviously needs a variance to be able to accomplish that.

MR. TORLEY: At this point, I will open this up to the members of the public. Please just say your name again for the record. Anyone wish to speak?

MR. SALTINI: My name is Hugo Saltini.

MR. TORLEY: Where do you live, sir?

MR. SALTINI: 122 Station Road.

MR. KANE: Probably the lot number you were looking for.

MR. SALTINI: In Kings Point but I believe my family does own the lot you were referring to, I believe it's 10 which is directly east of the lot in question.

MR. BABCOCK: 29 acre lot.

MR. SALTINI: Yes.

MR. TORLEY: Do you have any objection to this?

MR. SALTINI: Yes, my family has owned that property for well over 50 years and as time has gone on, we have seen the zoning change from the 150 to 125 and even with the 125 we felt that it would change the feel of the immediate area and to the point of taking the 125 current zoning and asking for a 25 percent or 20 percent reduction to 100 feet would impact the immediate area negatively maybe including the property value of the immediate area. Thank you.

MR. TORLEY: Anyone else?

MR. FERRARI: My name is Paul Ferrari and I have two parcels in proximity to the parcel being discussed. the opposite side of the road I have a 4 1/2, 4 3/4 acre piece of land at 255 and I'm on the deed with my mom adjoining the Saltini property down there. We have I think 18 acres or something close to that now. lifetime, I have seen a lot of changes there also and I know not too long ago you approved the road adjacent to this and put a house in and it's my understanding that that whole front part there is wetland, okay, and I see that every time we build roads, we could affect the drainage on the wetland, okay. And I too question why we're approving a variance for a such a small entrance to a piece of land to build a house way in the back. question that sincerely cause I mean we have rules and regulations, they have already been amended now you're

seeking to amend them again.

MR. KANE: That's what the board of appeals is.

MR. SALTINI: I understand but I don't see a need for it.

MR. TORLEY: So you own lots across the street from the property in question?

MR. BABCOCK: Also lot 11.

MR. FERRARI: Right.

MR. TORLEY: And the lots not immediately adjacent to you but the other lots one away the next most adjacent lots in either direction to you would appear to be 100 foot wide.

MR. FERRARI: I'd say perhaps closer to me when I come down my driveway.

MR. TORLEY: According to the survey, three lots 6, 8 and 9 are 102.5, 102.2, 102.2 feet.

MR. FERRARI: I have to see this.

MR. TORLEY: And it would appear that the lot beyond yours is about the same size.

MR. FERRARI: See I didn't look at the map to be honest with you.

MR. TORLEY: Well you can see according to the map here this is the lot we're referring to lot 8 is about the same width lot 6 is the same width.

MR. FERRARI: These are prior to though, correct.

MR. TORLEY: This is the other gentleman's property, your section and then another adjacent section and these other strings look like they're about the same 100 foot.

MR. FERRARI: But some of them may have houses on two

lots, you know.

MR. TORLEY: Is there a house, are there separate houses on lots 5, 6 and 8?

MR. REIS: Mr. Chairman, there's a house on lot 8.

MR. SALTINI: There's no house on lot 6?

MR. FAYO: Lot 6 is the old junk yard.

MR. SALTINI: What I was trying to get across to you is I own this lot and I also own a lot on this side of the road.

MR. TORLEY: Now the question is what time were these lots subdivided? Does anyone else in the audience wish to speak on this matter?

MS. FERRARI: I'm Susan Ferrari so I own 255 with my husband and my concern is that we would like to preserve the character of the environment and what's happening is that we're now coming up with road after road, driveway after driveway and the road itself has seen an increase in traffic in the past couple years so we're going for a variance now to put a house on a smaller piece of land than--

MR. TORLEY: Narrower.

MS. FERRARI: --narrower piece of land than is already zoned for and I object to that.

MR. TORLEY: Is there anyone else in the audience wishing to speak?

MS. HARRINGTON: I'm Wendell Harrington, I live at 235 Bull Road. I'm with Susan, basically, what we don't need is more traffic on that road, you know, getting a variance to add more housing to that road is not a good idea, the whole neighborhood is getting built up, built up, built up, we're trying to keep a rural character to this place.

MR. TORLEY: Ma'am, most of the lots there the tax map

shows there's a number of other buildable lots along that that if someone owns a buildable lot and wants to put a house up, they have that right.

MR. SALTINI: As long as it meets the zoning.

MS. HARRINGTON: Once you bend one way.

MR. KANE: No, every situation is taken individually. So you don't have a problem with a person paying taxes on that property but not being able to use it?

MS. HARRINGTON: No, I don't, I've got plenty of property I'm paying taxes on.

MR. KANE: I just asked a question, not here for an argument.

MR. FERRARI: Now he just raises the issue do I have a problem with the person paying taxes on a piece of land not being able to build on it. Now when a person buys a piece of land, if they realize that they can't build because it doesn't meet the zoning, what would be the intention of buying a piece of land that you can't build on unless they're going to appeal to you to allow them to build on it?

MR. TORLEY: There may be many issues involved, perhaps as you saw previously it might have been in the family for 50 years.

MR. FERRARI: How long has this been in his family?

MR. TORLEY: I don't know. When we get back on it. If anyone else has anything else to say from the public. In that case, I'll close the public hearing, open it back up to the members of the board. Becomes a relevant question. How long have you owned it?

MR. FAYO: I don't own it yet, I'm buying it so it's under contractor.

MR. TORLEY: And the previous owner had it for how long?

MR. FAYO: I don't know.

MR. BABCOCK: I don't have any of that record with me, Mr. Chairman.

MR. REIS: Mr. Chairman, I don't have the paperwork but I believe he owned it since the mid '80s.

MR. TORLEY: And at the time of the mid '80s this would have been a legal lot out there.

MR. REIS: As far as I know.

MR. BABCOCK: Well, it appears to me by the tax map that it's been there prior to zoning.

MR. TORLEY: So this would count by the tax map this lot would be a pre-existing non-conforming lot?

MR. BABCOCK: That's correct. If you look over on the bottom of the tax map you'll see lot 33.3, see the little 3 in parentheses, that will tell you that that was done after zoning because that's the subdivision map number lot 3. When they do a subdivision, they put in 1, 2, 3, 4. Once it goes to the tax map, tax map assigns the 8910 to it so it's got the two numbers, you know, it was done during the subdivision so I would say that this lot was prior to zoning.

MR. RIVERA: What portion of the property is wetlands?

MR. FAYO: Size wise?

MR. RIVERA: Yes.

MR. FAYO: I would say probably 3/4 of an acre maybe.

MR. RIVERA: Behind where you're building?

MR. FAYO: There's a small strip of a stream that comes down there and it narrows it down.

MR. RIVERA: And you're building where?

MR. FAYO: Develop it in the front but depends on perc,

worst case it would be in the back and it would have to be engineered.

MR. TORLEY: Is this near the other one that you had?

MR. FAYO: The other one I had was on Jackson.

MR. TORLEY: And is there anyone, lot 8 has a house on it, correct?

MR. KANE: Correct.

MR. TORLEY: Lot 6 we're not sure of.

MR. KANE: Junk yard.

MR. TORLEY: Lot 5 is a house and that's very wetback there so if a variance was granted to you for this, you would not, this would not exempt you from any of the laws requiring as far as drainage, impact on neighborhoods, that sort of thing, building codes for how the house can be built, kind of driveways, the only thing the variance would relieve you from is the width of the lot.

MR. FAYO: Yes.

MR. TORLEY: The lot area is 4.8 acres, the zoning now in R-1 is two acres, so if this lot was 25 foot wider, there would be no, he would not have to be here at all and if it was 25 foot wider at 40 feet back from the road, right?

MR. BABCOCK: I think at 45.

MR. TORLEY: Code now states that the width of lot is measured at the setback from the road for the house, you have to have a 45 foot front yard, you have to have 125 foot wide lot. If this lot was 25 foot wider at that point, could you build on it regardless so the question before the board he's asking for a variance as to whether this variance is substantial in light of the code as it now stands for lot size, width, et cetera. None of this is on registered wetlands?

MR. FAYO: Registered, as far as my knowledge, no, I do have the DEC coming down to check it and I will talk with him just to make sure.

MR. TORLEY: Because if my recollection is correct that registered wetlands do not count as buildable area then.

MR. FAYO: I don't think it's wetlands, I think it's under the flood zone but he's coming down the guy from DEC.

MR. TORLEY: Such variance would not exempt you from any DEC requirements.

MR. FAYO: I understand that.

MR. TORLEY: Gentlemen, any other questions?

MR. RIVERA: Accept a motion?

MR. TORLEY: At your pleasure.

MR. RIVERA: I make a motion we grant Mr. Anthony Fayo the requested 25 foot minimum lot width to construct a single family home.

MR. KANE: Second it.

ROLL CALL

MR. RIVERA AYE
MR. REIS ABSTAIN
MR. KANE AYE
MR. TORLEY AYE

MR. TORLEY: That concludes our business for the night. Motion to adjourn?

MR. REIS: So moved.

MR. KANE: Second it.

ROLL CALL

MR.	RIVERA	AYE
MR.	REIS	AYE
MR.	KANE	AYE
MR.	TORLEY	AYE

Respectfully Submitted By:

Frances Roth Stenographer

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